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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/363,191

07/29/1999

NAOYUKI KOFUJI

H-811

7803

24956

7590

10/28/2003

MATTINGLY, STANGER & MALUR, P.C.  
1800 DIAGONAL ROAD  
SUITE 370  
ALEXANDRIA, VA 22314

EXAMINER

ALEJANDRO MULERO, LUZ L

ART UNIT

PAPER NUMBER

1763

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/363,191

Applicant(s)

KOFUJI ET AL.

Examiner

Luz L. Alejandro

Art Unit

1763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4,6,8,9 and 34-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,8,9 and 34-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-2, 4, 6, 8-9, 34-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed fails to provide support for instant claimed invention of a dry etching apparatus wherein the antenna includes a discoidal electrode to which Ultra High Frequency is applied, an earth electrode and a dielectric plate provided between the discoidal electrode and the earth electrode.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-2, 4, 6, 8 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yokogawa et al., EP 0,779,644 A2.

Yokogawa et al. shows the invention as claimed including an apparatus for treating a body comprising: a chamber 101; a holder 111 in said chamber to receive a body to be treated; means 120 for introducing gas into said chamber; means for exhausting said gas in said chamber; a power supply 104 of ultra high frequency (500 MHz); a coil 102 located outside the chamber; an electromagnetic wave radiation antenna 107 coupled to said power supply and installed in an atmosphere; wherein said antenna 107 is a plate antenna (see figs. 1-2 and col. 5-line 3 to col. 7-line 3). Additionally, note that the antenna of the apparatus of Yokogawa et al. includes a discoidal electrode 107 to which the Ultra High Frequency is applied, an earth electrode 105, and a dielectric plate 106 which is provided between the discoidal electrode and the earth electrode.

Yokogawa et al. is applied as above but fails to expressly disclose that the antenna is located in an atmosphere different than the low vacuum in which the exhausting means is located and that a separation means is located between both locations. However, Yokogawa et al. discloses an apparatus in which the antenna is located in such a claimed atmosphere, that can be readily manufactured and maintained (see fig. 12 and col. 16-line 15 to col. 17-line 10). Therefore, in view of this disclosure, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of the embodiment disclosed in fig. 1, as to locate the antenna as shown in the embodiment of fig. 12 of Yokogawa et al., because in such a way the apparatus can be readily manufactured and maintained.

With respect to claim 4, official notice was taken with respect to the well known use of showerheads for uniform distribution of gases in the office action mailed 5/22/01, and therefore this limitation is taken to be admitted prior art.

With respect to the claimed distance between the showerhead and the substrate holder, such limitation is considered to involve routine optimization which has been held to be within the level of ordinary skill in the art. Therefore, one of ordinary skill in the art at the time the invention was made would have modified Yokogawa et al. by having a distance between the gas introduction means and the substrate holder of 100 mm in order to optimize the apparatus and the process being performed in the apparatus.

Furthermore, Yokogawa et al. states that the size of the circular conductive plate is set to a diameter in which a specific resonance mode of the electromagnetic wave can be obtained (col. 5, lines 33-36). Therefore, it would have been obvious to one of

ordinary skill in the art at the time the invention was made to modify the size of the conductive plate as to obtain the desired claimed resonance mode of electromagnetic waves, as to optimize the apparatus and/or the process performed in the apparatus.

Claims 9 and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yokogawa et al., EP 0,779,644 A2 in view of Nakano et al., U.S. Patent 6,155,202.

Yokogawa et al. is applied as above but does not expressly disclose that the power supply is provided in the form of a cone, but it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Yokogawa et al. as to provide the power supply in the form of a cone because, as disclosed by Nakano et al., better power consumption efficiency and optimization of the film being formed results (see col. 11-lines 40-45 and fig. 16 and its description).

### ***Response to Arguments***

Applicant's arguments filed 8/25/03 have been fully considered but they are not persuasive. Applicant argues that Yokogawa et al. fails to disclose the newly added limitation of the antenna including a discoidal electrode, an earth electrode and a dielectric plate provided between the discoidal electrode and the earth electrode. First, the examiner respectfully wants to point out that such newly added limitation to the independent claims is considered to be new matter as stated in the above rejection under 35 U.S.C 112-first paragraph. Furthermore, the examiner respectfully disagrees that the Yokogawa et al. reference does not disclose such limitation since Yokogawa et

al. clearly discloses the claimed antenna structure in figures 1-2 and in col. 5, lines 28-33, as stated in the above rejection under 35 U.S.C 103 over Yokogawa et al..

Applicants argue that the limitation of the conical-shaped feed division is not disclosed in Yokogawa et al. or in the remainder of the art of record, and that the electrode disclosed in the Nakano reference is used in an apparatus placed in a vacuum. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The combination of the Yokogawa et al. and the Nakano references disclose the claimed conical-shaped feed division.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

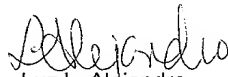
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luz L. Alejandro whose telephone number is 703-305-4545. The examiner can normally be reached on Monday to Thursday from 7:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Mills can be reached on 703-308-1633. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Luz L. Alejandro  
Primary Examiner  
Art Unit 1763

October 23, 2003